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ORIGINAL

# 25917

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS <b>FILED</b>  OCT 17 2008  CLERK U.S. DISTRICT COURT By <i>[Signature]</i> Deputy
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GARY WRIGHT,  
Plaintiff,

vs.

AMR CORPORATION, a Texas  
Corporation, AMERICAN AIRLINES,  
INC., a Texas corporation, JOHN DOE, an  
Individual, and DOES 1-20,

Defendants.

Civil Action No.

**3-08CV1856-G**

**ORIGINAL COMPLAINT AND JURY DEMAND**

COMES NOW Plaintiff, Gary Wright, by and through his Attorneys, and brings this action against AMR Corporation, American Airlines, Inc., John Doe, a passenger embarked onboard the subject flight (collectively "Defendants") for personal injuries he sustained on an American aircraft during a flight from DFW, Texas to John F. Kennedy International Airport ("JFK") that was designated as American Flight 322, connecting to American Flight 64 from JFK to Zurich, Switzerland, which were part of a single contract for carriage on a ticket issued to the plaintiff in the State of Texas. This action is governed by the Warsaw Convention and the Montreal Convention of 1999, also known as the Convention for the Unification of Certain Rules for International Carriage by Air.

The Plaintiff respectfully alleges:

**The Parties**

1. Plaintiff, Gary Wright, is a citizen of the State of Texas and a resident of Fort Worth, Tarrant County.

2. The defendants, AMR Corporation and American Airlines, Inc. (collectively "American") are believed and therefore alleged to be corporations organized under the laws of the United States, incorporated in and with headquarters in the State of Texas.

3. Defendant John Doe is an individual whose domicile is unknown. The true name and capacity of Defendant John Doe, who was a passenger onboard the subject flight seated near the Plaintiff, is unknown to Plaintiff who therefore sues said defendant by such fictitious name. Plaintiff will amend this Complaint to allege the true capacity of the defendant John Doe when it is ascertained. Plaintiff is informed and believes, and on such information and belief alleges, that the defendant designated herein as John Doe is responsible in some manner for the occurrence herein alleged which directly and proximately caused the injuries and damages alleged in this Complaint.

4. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants DOES 1 through 20 are unknown to plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true capacity of the defendant DOES when they are ascertained. Plaintiff is informed and believes, and on such information and belief alleges, that each of the defendants designated herein as a DOE is responsible in some manner for the occurrence herein alleged which directly and proximately caused the injuries and damages alleged in this Complaint.

5. Plaintiff is informed and believes, and thereon alleges, that each of the named defendants, and DOES 1 through 20, inclusive, were the agents, servants and employees of each of the remaining said defendants, and in performing the acts hereinafter alleged, were acting within the course and scope of said agency, service and employment with the advanced knowledge, acquiescence and ratification of each and every remaining defendant.

6. American regularly conducts business in the State of Texas and provides coordinated ticketing and operation of flights from the United States, including Dallas Fort Worth International Airport (“DFW”) in Fort Worth, Texas, to international destinations including Zurich, Switzerland.

7. American is an air carrier that provides services for the carriage of passengers by air using either its own aircraft or another carrier’s aircraft pursuant to a code share or other commercial agreement within the meaning of the Convention.

#### **Jurisdiction and Venue**

8. This Court has original jurisdiction pursuant to 28 U.S.C. §1331(a), in that this action arises out of and is governed by the Convention for the Unification of Certain Rules Relating to International Transportation by Air, October 12, 1929, 49 Stat. 3000, 2 Bevans, 983, 137 L.N.T.S. 11 (the “Warsaw Convention”), as amended by the Convention for the Unification of Certain Rules for International Carriage by Air (the “Montreal Convention 1999”) and related agreements and protocols.

9. This Court has jurisdiction over this matter and venue is proper pursuant to Article 33 of the Montreal Convention 1999 in that the plaintiff's principal and permanent residence is in the United States.

10. The subject flight involved "international carriage" as defined under Article One of the Montreal Convention 1999 and the plaintiff's injuries alleged herein resulted from an accident on board the defendants' aircraft in the course of international carriage within the meaning of the Montreal Convention 1999.

11. Personal jurisdiction exists over the defendant American by virtue of its ongoing business dealings in the State of Texas, with arriving and departing flights in the State of Texas on a regular basis.

12. Personal jurisdiction exists over defendant John Doe who, on information and belief, is alleged to be a resident of Texas.

13. This court also has supplemental jurisdiction over all actions pursuant to 28 U.S.C. §1367.

#### **General and Factual Allegations**

14. In or about August 28, 2007 the plaintiff purchased a ticket from American Express Business Travel, Tampa, Florida for international travel from Dallas-Fort Worth to Zurich, Switzerland, via JFK International Airport, New York, departing from DFW on September 8, 2007 on American Flight 322 and arriving in Zurich, on September 9, 2007 on American Flight 64. Flight 322 was part of an international flight with stopping points in the United States and in Europe. Therefore, the terms of the Montreal Convention and relevant Tariffs

apply to this matter. The return flight was scheduled to depart Zurich for the United States on September 28, 2007.

15. American Flight 322 was operated by American on an aircraft owned by American with cockpit and cabin crew who were employees of American.

16. The ticket for travel on American Flight 322 was issued by American.

17. On September 8, 2007, the Plaintiff was a fare-paying passenger on American Flight 322.

18. During American Flight 322 from DFW to JFK on September 8, 2007, the plaintiff sustained serious personal injuries when he was struck on the head by luggage removed from an overhead compartment by passenger John Doe who got out of his seat shortly after takeoff while the "Fasten Seat Belt" light was still illuminated and the rest of the passengers and flight crew were still seated.

19. The bag containing defendant John Doe's laptop computer struck Plaintiff on the head and caused him immediate and severe pain to his head, neck and upper back areas. Plaintiff continued the flight to JFK in pain and suffering for several hours.

20. Due to flight delays and other administrative issues, American was unable to attend to Plaintiff's injuries and assist him with his complaint, so Plaintiff boarded the next leg of the flight, American Flight 64 to Zurich.

21. After several days in Switzerland, Plaintiff's injuries became unbearable and he was admitted to a hospital in Zurich for treatment of symptoms directly resulting from the injuries he sustained on American Flight 322.

**COUNT ONE:**

**Plaintiff's Claim for Personal Injuries Against American Airlines  
Pursuant to Articles 17 and 21 of the Montreal Convention 1999**

22. Plaintiff hereby alleges and incorporates all paragraphs 1-21 above by reference herein.

23. The United States of America is a signatory to the Montreal Convention of 1999, which has been in effect since November 4, 2003. Article 1 of the Montreal Convention provides that the Convention's rules apply to international carriage. American Airlines Flight 322 was one leg of an undivided international round trip carriage from the United States to Switzerland and back to the United States. At the time of the incident, plaintiff Gary Wright was a fare paying passenger, ticketed to fly American Airlines Flight 322 and American Airlines Flight 64.

24. The plaintiff sustained bodily injury as a result of an accident on board an American aircraft during Flight 322 within the meaning of Article 17 of the Montreal Convention 1999. Plaintiffs' injuries and damages were caused by an unexpected and unusual event external to the passenger, plaintiff Gary Wright.

25. Pursuant to the provisions of Article 17 of the Montreal Convention 1999, defendant American is liable for damages sustained by the plaintiff as a result of the injuries he suffered as a result of the accident on board Flight 322 on September 8, 2007.

26. The plaintiff's injuries were the result of an accident pursuant to the provisions in Article 17 of the Montreal Convention 1999 and the defendant

therefore is strictly liable for, and may not limit or exclude its liability for damages up to and including 100,000 Special Drawing Rights as provided in Article 21.

27. The plaintiff's injuries occurred as a result of the defendant American's negligence or other wrongful act within the meaning of Article 21 of the Montreal Convention 1999, and the defendant therefore is liable for damages exceeding 100,000 Special Drawing Rights as provided in Article 21.

28. The defendant American, acting by and through Flight 322's cabin and cockpit crew and other employees, failed to take all necessary precautions to prevent the accident that resulted in plaintiff's injury during Flight 322 on September 8, 2007.

29. The plaintiff's injuries were the direct and proximate result of the defendants' negligence and other wrongful conduct in any or all of the following respects:

- a. Failing to take necessary precautions to anticipate the situation that caused the hazardous condition onboard Flight 322 that resulted in plaintiff's injury;
- b. Failing to avoid the hazardous conditions that caused the plaintiff's accident onboard Flight 322 that resulted in plaintiff's injury;
- c. Failing to adequately train and/or supervise its agents, servants, and employees in the proper security protocol and customer relations and violated their own rules, guidelines and policies;

- d. Failing to control all the embarked passengers and ensure that they adhered to Federal Aviation Regulations by remaining seated during the critical take-off phase of the flight.

30. As a direct and proximate result of the foregoing, the plaintiff, Gary Wright, suffered severe and permanent injuries, was rendered unable to engage in his usual occupation and activities, and suffered physical pain and mental suffering.

31. As a direct and proximate result of the foregoing, the plaintiff is entitled to recover all elements of damages allowable under law, including damages for the following: medical expenses; loss of impairment of earning capacity; economic losses; physical and mental pain and suffering; and all other damages recoverable under the laws of damages applicable to this action.

**COUNT TWO:**  
**Plaintiff's Claim for Negligence Against John Doe**

32. Plaintiff hereby alleges and incorporates paragraphs 1-31 by reference herein.

33. Defendant John Doe owed a duty of care to plaintiff Gary Wright onboard American Airlines Flight 322 to JFK. These duties include the duty not to batter or harm others. Additionally, defendant has a duty not to act in a manner which would cause physical and/or emotional harm to plaintiff.

34. Defendant John Doe breached this duty of care by intentionally, recklessly, willfully, unlawfully, negligently, tortiously and/or carelessly acting in



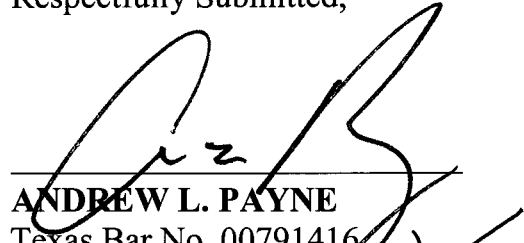
a conscious disregard for the safety of others, including Plaintiff Gary Wright through his disorderly and disruptive actions by getting out of his seat and attempting to retrieve baggage in the overhead compartment while the 'fasten seatbelt' light was illuminated onboard American Airlines Flight 322. These actions could and did result in harm to plaintiff.

35. Defendant John Doe's acts and omissions and breaches of the duties owed to plaintiff proximately caused injuries and damages to plaintiff, including but not limited to serious physical and mental injuries, past and future medical expenses, past and future wage loss, past and future pain and suffering, past and future emotional distress, loss of enjoyment of life, physical and mental disability, trauma, fear, fright, embarrassment, loss of consortium and any and all special and general damages allowed by law or otherwise, all in an amount to be proven at trial.

**WHEREFORE**, the Plaintiff demands judgment against the Defendants AMR, American Airlines, John Doe and DOES 1-20 inclusive, in an amount that provides full and fair compensation for the injuries and damages he suffered, plus interest and costs.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. L. Payne', is written over a horizontal line.

**ANDREW L. PAYNE**

Texas Bar No. 00791416

**PAYNE MITCHELL LAW GROUP**

2911 Turtle Creek Blvd., Suite 1400

Dallas, TX 75219

Telephone: (214) 252-1888

Facsimile: (214) 252-1889

JS 44 (Rev. 12/87)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**GARY L. WRIGHT

(b) County of Residence of First Listed Plaintiff Tarrant  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrew L. Payne, Payne Mitchell Law Group  
2911 Turtle Creek Boulevard, Suite 1400, Dallas, TX 75219

**DEFENDANTS**3-08CV1856-G  
AMR CORPORATION

County of Residence of First Listed Defendant Tarrant

(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

OCT 17 2008**II. BASIS OF JURISDICTION**

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTY** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		
		<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.)  
Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 1999

Brief description of cause:  
Personal injury onboard international commercial air carrier flight.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_